

No. 50381-6-11

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MARGARET BOZGOZ,

Appellant,

vs.

YOUSSEF ESSAKHI, et al.,

Respondents.

RESPONDENTS' BRIEF

Roy A. Umlauf, WSBA #15437
Jeffrey T. Kestle, WSBA #29648
FORSBERG & UMLAUF, P.S.
901 Fifth Avenue, Suite 1400
Seattle, WA 98164
(206) 689-8500

Attorneys for Respondents

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I. INTRODUCTION

Appellant Margaret Bozgoz (“Bozgoz”) is the Personal Representative of Evalani Yockman’s (“Evalani”)¹ Estate. Bozgoz is not an attorney. On October 26, 2016, Bozgoz, on behalf of Evalani’s Estate and Evalani’s daughter, Elda Yockman (“Elda”), filed a lawsuit against Respondent Life Transportation and its driver, Respondent Youssef Essakhi (collectively “Respondents”). Bozgoz alleged that Evalani was injured in November 2013 when Respondents transported her from a medical appointment to her home.

The trial court properly dismissed the lawsuit because Bozgoz is not a lawyer and has no standing to prosecute a *pro se* lawsuit on behalf of Evalani’s Estate or Elda. The Complaint was fatally flawed and the trial court’s order striking it should be affirmed.

II. ISSUES PRESENTED FOR REVIEW

1. Bozgoz, a non-lawyer Personal Representative of Evalani’s Estate, did not have standing to bring a *pro se* lawsuit on behalf of the Estate or Elda.

¹ For purposes of clarity, Evalani Yockman and Elda Yockman are identified by their first names in this brief.

2. Bozgoz, a non-lawyer attorney-in-fact under a power of attorney, did not have standing to bring a *pro se* lawsuit on behalf of Elda, the principal.

3. Bozgoz's Assignments of Error and other miscellaneous arguments unrelated to her standing to bring the lawsuit are without merit and do not change the fact that the Complaint was void on its face.

III. STATEMENT OF THE CASE

On October 26, 2016, Bozgoz, on behalf of Evalani's Estate and Elda, filed suit against Respondents (CP 1-10). Bozgoz alleged that Evalani sustained injuries in 2013 when Respondents transported her from a medical appointment to her home (*Id.*). Elda did not sign the Complaint and Bozgoz signed it as "Personal Representative of the Estate of Evalani A. Yockman" (CP 10). Bozgoz asserted no claims on her own behalf (CP 1-10).

Respondents filed a Motion to Strike Complaint (CP 14-18). They argued that the case should be dismissed under Civil Rule 11 because Bozgoz is not licensed to practice law in Washington and had no standing as Personal Representative to bring a *pro se* claim on behalf of Evalani's Estate or Elda.

On December 19, 2016, Bozgoz filed a response brief (CP 19-50). She signed the brief as "Personal Representative of the Estate of Evalani

A. Yockman” (CP 24). She explained that she filed the Complaint *pro se* because her attorney withdrew three weeks before the expiration of the statute of limitations and she was unable to find a replacement attorney (CP 21). She argued – without citation to relevant authority – that she had the right to bring claims on behalf of Evalani’s Estate without an attorney (CP 22-23). She did not argue that she was authorized to assert a claim on Elda’s behalf.

At the December 23, 2016 hearing on Respondents’ Motion to Strike Complaint, the trial court granted the motion and dismissed the case (CP 52, 57-58). The trial court ruled that Respondents were entitled to an award of attorney’s fees and costs incurred in filing the motion and attending the hearing, the amount of which was to be determined in a subsequent motion (CP 57-58). Respondents elected not to seek a judgment for fees and costs.

On December 27, 2016, Bozgoz filed a Motion to Reconsider (CP 59-113). For the first time, Bozgoz argued that she was authorized to file suit on Elda’s behalf because Bozgoz was Attorney-in-Fact for Elda under a Durable Power of Attorney (CP 59-67, 73-78).

On February 21, 2017, the trial court entered an Order Denying Plaintiffs’ Motion to Reconsider (CP 153).

On February 24, 2017, Bozgoz appeared *ex parte* at the trial court's motions calendar. As a courtesy to Bozgoz, the trial court explained on the record why it denied the Motion to Reconsider three days earlier (CP 154-160).

IV. ARGUMENT

A. The Determination of Whether Bozgoz Had Standing to Sign Pleadings for Evalani's Estate and Elda Under CR 11 is *De Novo*

The trial court struck the Complaint because it violated CR 11. Appellate courts review a trial court's interpretation of a court rule *de novo*. *Spokane County v. Specialty Auto & Truck Painting, Inc.*, 153 Wn.2d 238, 244, 103 P.3d 792 (2004).

CR 11 provides that every pleading must be signed by an attorney or a *pro se* litigant. It further provides that noncompliant pleadings may be stricken. Here, the trial court struck the Complaint because Bozgoz did not have standing to represent and sign pleadings on behalf of Evalani's Estate and Elda.

B. Bozgoz Did Not Have Authority as Personal Representative to File a *Pro Se* Lawsuit on Behalf of Evalani's Estate or Elda

"With few exceptions, only active members of the Washington State Bar Association may practice law, which includes representing another in court. RCW 2.48.170; APR 1(b); *Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wash.2d 48, 56-57, 586 P.2d

870 (1978). The ‘pro se’ exceptions are quite limited and apply only if the layperson is acting solely on [her] own behalf. *Id.* at 57, 586 P.2d 870.” *Marina Condominium Homeowner’s Ass’n v. Stratford at Marina, LLC*, 161 Wn. App. 249, 263-64, 254 P.3d 827 (2011).

In *Dutch Village Mall v. Pelletti*, 162 Wn. App. 531, 256 P.3d 1251 (2011), the Court of Appeals for Division I held that the owner of a single-owner LLC could not represent the company in court; rather, the company could only appear through an attorney. The Court of Appeals explained that an LLC should be treated the same as other artificial entities, like corporations:

Because a corporation is an artificial entity, necessarily its interests in a court proceeding must be represented by a person acting on its behalf. Representing another person or entity in court is the practice of law. To practice law, one must be an attorney. RCW 2.48.170. Thus Washington, like all federal courts, follows the common law rule that corporations appearing in court proceedings must be represented by an attorney. *Lloyd*, 91 Wn. App. at 701, 958 P.2d 1035.

The United States Supreme Court has stated that the rationale for the common law rule ‘applies equally to all artificial entities.’ *Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 202, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993) (emphasis added).

Dutch Village Mall, 162 Wn. App. at 534.

The reasons for the common law rule, as explained by the *Dutch Village Mall* court, include (1) protecting other persons who may have an

interest in the artificial entity; and (2) protecting the represented entities' adversaries and the courts from the burdens inherent in dealing with litigation handled by non-lawyers. *Dutch Village Mall*, 162 Wn. App. at 537-38.

No Washington appellate court has addressed whether a personal representative who is not an attorney may represent an estate in judicial proceedings. However, federal Circuit Courts that have examined the issue have held that an estate must be represented by an attorney unless the personal representative is the sole beneficiary of the estate. *See, e.g., Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997); *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002); *Malone v. Nielson*, 474 F.3d 934, 937 (7th Cir. 2007); *Jones v. Corr. Med. Servs. Inc.*, 401 F.3d 950, 951 (8th Cir. 2005). State courts in other jurisdictions have reached the same conclusion. *See, e.g., Ex parte Ghafary*, 738 So. 778, 779 (Ala. 1998) (complaint filed by executrix was a nullity because executrix was not a licensed attorney); *Hansen v. Hansen*, 114 Cal. App. 4th 618 (2003) (when non-lawyer brings a non-probate action *in propria persona* on behalf of estate, the proper remedy is to strike the complaint).

These federal and foreign state decisions rely on the same rationale followed by the Washington courts that prohibit *pro se* representation of “artificial entities.” The decisions are also consistent with Washington’s

rule that a layperson can act *pro se* only when acting solely on her own behalf. Elda is the sole beneficiary of Evalani's Estate (Amended Opening Brief of Appellant, pp. 4, 14, 38). Bozgoz cites no authority authorizing her, as Personal Representative, to bring suit on behalf of Evalani's Estate or Elda.

Bozgoz is not an attorney and she did not bring this action on her own behalf. She engaged in the unauthorized practice of law when she filed the Complaint on behalf of Evalani's Estate and Elda, and she continues to do so in pursuing this appeal. Washington law prohibits Bozgoz from representing Evalani's Estate and Elda in this action. This Court should affirm the trial court's dismissal of the Complaint. *See Dutch Village Mall*, 162 Wn. App. at 539 ("When [an artificial entity] presents a pleading not signed by an attorney, CR 11 is a proper basis for striking the pleading.").

C. Bozgoz Did Not Have Authority as Attorney-in-Fact to File a *Pro Se* Lawsuit on Behalf of Elda

In her Motion for Reconsideration in the trial court, Bozgoz argued for the first time that she was authorized to file the Complaint on Elda's behalf because Bozgoz was Attorney-in-Fact for Elda under a Power of Attorney. This argument fails.

It is well-established law in Washington that a power of attorney does not authorize the practice of law. *State v. Hunt*, 75 Wn. App. 795, 805-807, 880 P.2d 96 (1994). Moreover, although a person may practice law on her own behalf, she “cannot transfer [her] ‘*pro se*’ right to practice law to any other person.” *Id.*, at 807. The *pro se* exception is narrow, limited, and personal. *Id.*, at 805. The law is clear: Elda cannot transfer any of her *pro se* rights to Bozgoz through a power of attorney or otherwise. Bozgoz cites no authority supporting her arguments to the contrary. This Court should affirm the trial court’s dismissal of the Complaint.

D. Bozgoz’s Assignments of Error and Miscellaneous Procedural Arguments are Without Merit

In addition to the four or five Assignments of Error² in Bozgoz’s September 5, 2017 Amended Opening Brief of Appellant, Bozgoz makes several arguments that the trial court made procedural errors that justify reversal. Bozgoz’s arguments are without merit and do not change the fact that she had and has no standing to represent and sign pleadings on behalf of Evalani’s Estate and Elda. In the argument below, Respondents first address Bozgoz’s Assignments of Error and then address the other procedural issues raised in her opening brief.

² Bozgoz lists four Assignments of Error on page 11 and five Assignments of Error on page 12 of her Amended Opening Brief of Appellant filed on September 5, 2017.

1. Bozgoz's Subject Matter Jurisdiction Argument is Without Merit

Bozgoz's first Assignment of Error is that the trial court should have vacated the dismissal under CR 60(b)(4) for failure of subject matter jurisdiction. Bozgoz argues that the trial court lacked subject matter jurisdiction because the Respondents did not appear or testify at the hearing on the Motion to Strike Complaint. Bozgoz did not raise this argument in the trial court and there is no authority that required the Respondents to personally appear or testify at the hearing.

2. There was No Basis to Sanction Respondents in Connection with the December 23, 2016 Hearing

Bozgoz's second Assignment of Error appears to be that the trial court failed to sanction the Respondents in connection with their successful Motion to Strike Complaint. Bozgoz lost the motion, she did not request sanctions from the trial court, and she offers no argument or authority in her Amended Opening Brief of Appellant in support of the Assignment of Error.

3. Bozgoz's Request for an Award of Appellate Fees and Costs Is Not a Proper Assignment of Error

Bozgoz's third Assignment of Error appears to be a request for an award of fees and costs in connection with this appeal. It has nothing to do with the proceedings in the trial court.

4. Bozgoz Was Afforded Due Process

Bozgoz's fourth Assignment of Error discusses a variety of issues, including alleged violations of due process, discrimination, the ADA, and the ADAAA.

Bozgoz argues that the trial court denied her "reasonable accommodation in preparation for the hearing without explanation or reason." (Amended Opening Brief of Appellant, p. 19) Nothing in the record on appeal supports the argument. In support of the argument, Bozgoz cites her Designation of Clerk's Papers (CP 167-68), the transcript from the February 24, 2017 hearing at which the trial court explained its and the VRP for 2/24/17 hearing at which trial court explained its reasons for denying the reconsideration motion (CP 169-175), and a declaration she filed in support of her motion for reconsideration (CP 114-152). Nothing in the record supports the claim that Bozgoz filed or the trial court denied a motion for reasonable accommodation. In addition, since Bozgoz lacked standing to file the lawsuit on behalf of Evalani's Estate and Elda, she lacked standing to request reasonable accommodation.

Bozgoz also argues that her due process rights were violated because her Court Call into the December 23, 2016 hearing on Respondents' Motion to Strike allegedly "went mute." Bozgoz does not deny that she received notice of Respondents' Motion to Strike Complaint,

that she filed a written response to the motion, and that she was allowed to argue her position at the December 23, 2016 hearing. The transcript of the hearing shows that Bozgoz made the last argument before the trial court signed the order granting Respondents' motion.³ Even if the Court Call "went mute," as alleged, it did not impact Bozgoz's ability to argue her position.

5. Bozgoz's Fifth Assignment of Error is Without Merit

Bozgoz's Fifth Assignment of Error is unclear. She appears to request an award of money, but she doesn't explain how it relates to any alleged error by the trial court.

6. Bozgoz's Arguments Regarding the Trial Court's Expressed Willingness to Award Fees and Costs to Respondents is Moot – Respondents Did Not Pursue Fees and Costs in Trial Court

Bozgoz argues that the trial court erred by awarding Respondents' fees and costs incurred in bringing the Motion to Strike Complaint. Respondents never filed a motion to determine the amount of fees and costs to be awarded. Respondents confirm that they have not and will not seek an award of past trial court fees and costs in connection with their Motion to Strike Complaint. Bozgoz's argument regarding the propriety of the trial court's decision to award fees is therefore moot.

³ The transcript is attached hereto as Appendix A. Bozgoz attached this document to an earlier attempt to file her opening brief (7/5/17), which was rejected.

7. The Trial Court Did Not Violate Bozgoz's First Amendment Rights

Bozgoz argues that her First Amendment rights were somehow violated during a hearing held on February 24, 2017, three days after the trial court denied Bozgoz's motion for reconsideration. During the trial court's motions hearing calendar on February 24, 2017, the trial court, as a courtesy to Bozgoz, explained the court's rationale for dismissing the case and denying the motion for reconsideration (CP 154-160). The trial court allowed Bozgoz to express her concerns with the trial court's rulings. The trial court did not violate Ms. Bozgoz's First Amendment rights in any way.

8. Bozgoz Complains that Hearing Transcripts Were Altered, but Failed to Take Action Under RAP 9.5(c)

Bozgoz spends much of her Amended Opening Brief of Appellant complaining that the transcripts of the trial court hearings on December 23, 2016, and February 24, 2017, are inaccurate. The appropriate method for objecting to the transcripts is set forth at RAP 9.5(c). Bozgoz failed to file an objection to the verbatim report of proceedings pursuant to RAP 9.5(c).

9. The Motion to Strike Was Properly Noted

Bozgoz complains about the timing of the Respondents' Motion to Strike. Respondents filed and served their Motion to Strike on December 15, 2016, and noted it for December 23, 2016, eight days later

(CP 14-18). Pierce County Local Rule 7(a)(3)(A) requires only six days' notice for motions. Respondents' Motion to Strike complied with the applicable procedural rules and Bozgoz did not challenge the timing or service of the Motion to Strike in the trial court.

V. CONCLUSION

The trial court properly granted Respondents' Motion to Strike Complaint. Bozgoz was not authorized to file a *pro se* Complaint on behalf of Evalani's Estate or Elda because she is not an attorney. Neither her status as Personal Representative of Evalani's Estate nor her status as Attorney-in-Fact for Elda under the Power of Attorney exempts her from the rule that a party may appear *pro se* only when acting solely on her own behalf. The miscellaneous procedural arguments Bozgoz makes are without merit and do not alter the fact that she lacked standing to file the Complaint in the first place. The Complaint was fatally flawed and the trial court's order striking it should be affirmed.

RESPECTFULLY SUBMITTED this 2nd day of October, 2017.

FORSBERG & UMLAUF, P.S.

By: _____

Roy A. Umlauf, WSBA #15437
Jeffrey T. Kestle, WSBA #29648
Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the **RESPONDENTS' BRIEF** on the following individuals in the manner indicated:

Ms. Margaret Bozgoz
3553 Burr Court, Unit A
Fort George Meade, MD 20755
(X) Via UPS Delivery
(X) Via Email
(X) ECF

SIGNED this 2nd day of October, 2017, at Seattle, Washington.



Lynda T. Ha

APPENDIX A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MARGARET BOZGOZ,

Plaintiff,

vs.

YOUSSEF ESSAKHI, et al.,

Defendants.

)
)
)
) Superior Court
) No. 16-2-12303-7
)
) Court of Appeals
) No. 50381-6-II
)
)

VERBATIM TRANSCRIPT OF PROCEEDINGS

DECEMBER 23, 2016
Pierce County Superior Court
Tacoma, Washington
Before the
HONORABLE STANLEY J. RUMBAUGH

Carol Frederick, CCR, 2406
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 18
Tacoma, Washington 98402

A P P E A R A N C E S

FOR THE PLAINTIFF:

MARGARET BOZGOZ
(Appearing Pro Se via CourtCall)

FOR THE DEFENDANT
LIFE TRANSPORTATION, INC.:

LESLEY J. FLEMING
ROY A. UMLAUF
Attorneys at Law

ALSO PRESENT:

ELDA YOCKMAN

1 BE IT REMEMBERED that on the 23rd of December, 2016,
2 the following proceedings were held before the **HONORABLE**
3 **STANLEY J. RUMBAUGH**, Judge of the Superior Court in and for
4 the County of Pierce, State of Washington, sitting in
5 Department 18.

6 WHEREUPON the following proceedings were had, to wit:

7
8 * * * *

9
10 THE COURT: Good morning. And I'm going to try your
11 name. Essakhi?

12 MS. BOZGOZ: Bozgoz. It's spelled Bozgoz.

13 THE COURT: Oh, Ms. Bozgoz. Okay. Thank you, ma'am.
14 Can you hear me okay?

15 MS. BOZGOZ: Yes, sir.

16 THE COURT: All right. We're here on Bozgoz vs.
17 Essakhi. Do you know how to pronounce the last name?

18 MS. FLEMING: Good morning, Your Honor. May it please
19 the Court, Lesley Fleming on behalf of Life Transportation.

20 THE COURT: Bail me out, Ms. Fleming.

21 MS. FLEMING: I believe it's Essakhi, and he's an
22 employee of Life Transportation owned by Mr. Okobon. And
23 we're here on our motion to strike the complaint,
24 Cause No. 16-2-12303-7.

25 THE COURT: I have read the pleadings. I understand

1 that Ms. Bozgoz has filed a complaint, allegedly pro se,
2 but in her Capacity as a Personal Representative of the
3 Estate of Evalani Yockman.

4 MS. ELDA YOCKMAN: That is I.

5 MS. BOZGOZ: Yes, sir.

6 THE COURT: Ms. Bozgoz, this is to you.

7 The rules, regrettably, are quite clear. You cannot
8 act in a pro se status unless you are representing yourself
9 individually and not what we call another entity.

10 So, for example, corporations can only appear through
11 attorneys. Limited liability companies can only appear
12 through attorneys. And, as I read the law, a personal
13 representative of an estate can only appear through
14 counsel.

15 I understand that you had an attorney who withdrew or
16 quit three weeks before the wrongful statute would have run
17 out.

18 MS. BOZGOZ: Yes, sir.

19 THE COURT: And I understand your quandary. However, I
20 don't make these rules up. This is the way it is, so I'm
21 going to have to grant the motion to strike your complaint.

22 Your relief, if there is any, would be directed to the
23 lawyer. And I make no comment about whether or not there
24 is any case to be had. But I can only tell you that the
25 law is quite clear about pro se representations.

1 You can't do it on behalf of anyone other than yourself
2 individually.

3 MS. BOZGOZ: Sir, my cousin is there too in Court. She
4 is the full beneficiary there.

5 THE COURT: I have her here. But that doesn't change
6 the filing of the complaint. I'm not here to decide who is
7 the beneficiary or what they may or may not get in the
8 estate.

9 The sole question is whether or not the complaint that
10 was filed in this case signed by you is a valid complaint.
11 And because you are not admitted to the Bar Association of
12 the State of Washington, I'm sorry to tell you that it is
13 not. And the motion to strike will be granted.

14 Do you have an order?

15 MS. FLEMING: I do, Your Honor.

16 MS. BOZGOZ: Sir, I had no other choice but to file.
17 And, as I told you, I had no other choice. And as a
18 responsible person for the personal representative or for
19 the estate I did what I had to do, so I filed as personal
20 representative. I understand I can do that.

21 And as far as -- I've been looking -- we've been
22 looking for attorneys. However, it's very difficult when
23 you have an attorney who files three weeks before the
24 statute of limitation because nobody that we talk to that
25 is a wrongful death attorney will accept the case because

1 it is an at risk case.

2 I've been working with their inner attorney and our
3 attorney both, two attorneys. And they've been writing the
4 case in Zurich's favor for two years now.

5 Now, Zurich was the one that called us and took
6 responsibility and wanted to close out the claim.

7 THE COURT: Ms. Bozgoz, I accept that all you say is
8 true. What I'm telling you is the law compels me to strike
9 your complaint.

10 I'm sorry about the circumstances that you found
11 yourself in. I recognize you did what you could do. But,
12 like I said, I don't make this up as I go.

13 So I have signed the order striking your complaint.
14 Ms. Fleming, if you could sign the presentation for me.

15 MS. FLEMING: Yes, Your Honor.

16 THE COURT: You will provide Ms. Bozgoz a copy of the
17 order?

18 MS. FLEMING: I will.

19 THE COURT: Would you like a copy of the order, ma'am?

20 MS. ELDA YOCKMAN: I don't understand.

21 THE COURT: I explained what I'm doing. That's the
22 best I can do for you. Do you want a copy of the order?

23 MS. ELDA YOCKMAN: Please.

24 THE COURT: Thank you.

25 (Proceeding concluded.)

FORSBERG & UMLAUF, P.S.

October 02, 2017 - 2:38 PM

Transmittal Information

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Appellate Court Case Title: Margaret Bozgoz, Appellant v Youssef Essakhi et al, Respondents
Superior Court Case Number: 16-2-12303-7

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